

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 8, 2010, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew, Vice - Chairman
Walter Schmidt
Tom Day
Nancy Bonniwell
Rob Schuett

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Mary E. Finet, Senior Land Use Specialist
Dwight Simon, BA10:023, petitioner
Paul Bretl, BA10:023, neighbor
Wes Jones, BA10:023, neighbor
Daniel M. Mahnke, BA10:024, petitioner
Patricia Cataldo, BA10:025, petitioner
Jeno Cataldo, BA10:025, son of the petitioner
Paul Schultz, BA10:025, architect

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I move to approve the Summary of the Meeting of August 11, 2010, with the following corrections:*

Page 2 - In the case of James and Jennie Race (BA10:020), the motion was carried with three yes votes (not unanimously, as stated) and Mr. Schmidt abstained.

Page 4 - In the case of Gregory and Kathy Nickolaus (BA10:022), the first motion was seconded by Mr. Bartholomew (not Ms. Bonniwell, as stated) and on the second motion Mr. Schmidt voted no (rather than abstained, as stated).

The motion was seconded by Ms. Bonniwell and carried with four yes votes. Mr. Schuett abstained because he was not present at the meeting of August 11, 2010.

NEW BUSINESS:

BA10:023 DWIGHT AND SANDRA SIMON:

Mr. Schmidt

*I move to **deny** the request for a variance from the floor area ratio requirement to permit the proposed remodeling and expansion of the detached garage, but to **approve** variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback requirement and to **approve** a special exception from the accessory building floor area ratio requirement to permit the detached garage to be remodeled and expanded, with the conditions stated in the Staff Report, but with Conditions No. 1 and 3 modified as follows:*

Revised Condition No. 1 - The outer edge of the north wall of the garage addition may extend no more than 18 ft. from the north wall of the existing garage. The garage overhangs shall not exceed two (2) ft. in width. This will permit the expanded garage to have overall dimensions of 24.1 ft. x 42 ft. Not including any upper-level storage area, this would result in a garage with a maximum floor area of approximately 902 sq. ft., which would result in a floor area ratio of approximately 14.3% and an accessory building floor area ratio of approximately 4.4%.

Revised Condition No. 3 - The remodeled and expanded garage may contain an upper-level storage area accessible via a permanent staircase, provided the garage is in conformance with the height requirement noted above and provided the area of the upper-level storage area does not result in a non-conforming floor area ratio of more than 15%.

The reasons for this decision are as stated in the Staff Report, with the second to the last paragraph replaced with the following:

“A special exception is a minor adjustment to the requirements of the Ordinance, where specifically authorized by the Ordinance, owing to special conditions of the property. Relief from the maximum permitted accessory building floor area ratio of 3% is a special exception, rather than a variance, which does not necessarily require the demonstration of an unnecessary hardship. However, when granting a special exception, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. Approval of the garage addition, as conditioned, would result in a

detached garage with overall dimensions of 24.1 ft. x 42 ft., which is compatible with the neighborhood. Approval of the garage addition, as conditioned, would also permit an upper-level storage area that is accessible via permanent stairs, which would provide safer access to the upper-level storage area than pull-down stairs and would accommodate the petitioner's wife, who is physically unable to access an upper-level storage area via pull-down stairs. Therefore, the approval of a special exception from the accessory building floor area ratio, as conditioned, meets the intent of the special exception provision."

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of a variance from the floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the proposed remodeling and expansion of the detached garage. However, the Planning and Zoning Division staff recommended **approval** of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance and **approval** of a special exception from the accessory building floor area ratio requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the existing detached garage to be remodeled and expanded, subject to the following conditions:

1. The outer edge of the north wall of the garage addition may extend no more than 12 ft. from the north wall of the existing garage. The garage overhangs shall not exceed one (1) ft. in width, except on the east side of the garage addition, where, in order to cover the existing sidewalk, the outer edge of the overhang may extend one (1) ft. beyond the line of the east wall of the existing garage. This will permit the expanded garage to have overall dimensions of 24.1 ft. x 36 ft. Not including any upper-level storage area, this would result in a garage with a maximum floor area of approximately 867 sq. ft., which would result in a floor area ratio of approximately 14.1% and an accessory building floor area ratio of approximately 4.2%. An upper-level storage area of 102 sq. ft., as proposed, would result in a garage with a maximum floor area of approximately 969 sq. ft., which would result in a floor area ratio of approximately 14.6% and an accessory building floor area ratio of approximately 4.7%.
2. The garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured to the peak of the roof, must not exceed 18 ft.
3. The remodeled and expanded garage may contain an upper-level storage area accessible via a permanent staircase, provided the garage is in conformance with the height requirement noted above and provided the area of the upper-level storage area does not result in a non-conforming floor area ratio of more than 15%. An upper-level storage area in the garage that is accessible only via pull-down stairs shall not be included in the calculation of the floor area ratio.

4. Prior to the issuance of a Zoning Permit, a complete set of plans for the remodeling and expansion of the garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of a floor area ratio variance would not be unnecessarily burdensome, since conformance with the floor area ratio requirement would permit a total floor area of approximately 3,073 sq. ft.

However, hardships do exist with respect to the remodeling a non-conforming structure in excess of 50% of its fair market value provision and the road setback requirement. Limiting the cost of any remodeling and expansion of the existing garage to less than 50% of its fair market value would preclude all but the most minor remodeling of the structure, which would be unnecessarily burdensome. Due to the location of the septic field, a new detached garage could not be constructed in a conforming location. The existing detached garage is a concrete block structure in good condition and the proposed addition conforms with all locational requirements of the Ordinance, with the exception of its setback from the unnamed and unimproved public right-of-way on the west side of the property. Further, due to the angle of the garage, the proposed garage addition will be farther from the unnamed and unimproved public right-of-way than the existing garage and, with the recommended conditions, the expanded garage would not adversely affect the neighboring properties or be contrary to the public interest.

Relief from the maximum permitted accessory building floor area ratio of 3% is a special exception, rather than a variance, which does not necessarily require the demonstration of an unnecessary hardship. However, when granting a special exception, the Board must still consider whether the requested special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions they deem necessary for the protection of adjacent properties and the public interest and welfare. The proposed garage addition would result in a detached garage with overall dimensions of 24.1 ft. x 42 ft., which the staff believes is too large for the lot and not in keeping with other garages in the neighborhood, whereas an expanded garage, as recommended, with overall dimensions of 24.1 ft. x 36 ft. would still provide needed additional storage space, but would be more appropriately sized for the lot and in keeping with other garages in the area.

Therefore, it would not be in conformance with the purpose and intent of the Waukesha County Shoreland and Floodland Protection Ordinance to grant a floor area ratio variance. However, the approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback requirement and the approval of a special exception from the accessory building floor area ratio to permit the garage to be remodeled and expanded, with the recommended conditions, is conformance with the purpose and intent of the Ordinance.

BA10:024 DANIEL M. MAHNKE (Owner) BRAD DEMIEN (Agent):

Mr. Schmidt

*I move to **approve** the request for variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback, floor area ratio and open space requirements to permit the residence to be remodeled and expanded, subject to the conditions stated in the Staff Report and for the reasons stated in the Staff Report. I also move to **approve** variances from the road setback, floor area ratio, and open space requirements and a special exception from the accessory building floor area ratio requirement to permit a 12.1 ft. x 12.1 ft shed that is now located mostly within the 16 ft. wide platted, but unimproved, public right-of-way west of the property, to be relocated so that it is entirely on the subject property, subject to the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback, floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the residence to be remodeled and expanded, subject to the conditions noted below. The Planning and Zoning Division staff also recommended **approval** of variances from the road setback, floor area ratio, and open space requirements and a special exception from the accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit a 12.1 ft. x 12.1 ft shed that is now located mostly within the 16 ft. wide platted, but unimproved, public right-of-way west of the property, to be relocated so that it is entirely on the subject property, subject to the conditions noted below.

1. If the 16 ft. wide platted, but unimproved, public right-of-way on the west side of the property is vacated by the Town of Oconomowoc and attached in its entirety to the subject property, the 12.1 ft. x 12.1 ft. shed may remain in its current location. If the 16 ft. wide platted, but unimproved, public right-of-way on the west side of the property is vacated by the Town of Oconomowoc and only the easterly 8 ft. is attached to the subject property, the shed must be removed or relocated to be at least 5 ft. from the centerline of the vacated public right-of-way. Further, if the shed is relocated, it must also be at least 5 ft. from the north lot line, outside of the established road right-of-way of E. Lindy Lane, and outside of the established road right-of-way of Wisconsin Avenue.

2. If the 16 ft. wide platted, but unimproved, public right-of-way on the west side of the property is not vacated by the Town of Oconomowoc, the shed must be removed or relocated to be outside of the 16 ft. wide platted public right-of-way. The shed may be relocated within the established road right-of-way of that platted, but unimproved, public right-of-way (currently 25 ft. east of the eastern edge of the 16 ft. wide platted public right-of-way, but subject to change as noted in Condition No. 7), only if the following occur:
 - Prior to relocation of the shed, the Oconomowoc Town Board must approve the relocation of the shed within the established road right-of-way of the platted, but unimproved, public right-of-way on the west side of the property and evidence of that approval must be submitted to the Planning and Zoning Division staff.
 - A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the shed will be located partially within the established road right-of-way of the platted, but unimproved, public right-of-way on the west side of the property and if, in the future, any portion of the shed should interfere with necessary road improvements, that portion of the shed must be removed at the owner's expense. Prior to relocation of the shed, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.
3. Conformance with the above conditions must be achieved, prior to the issuance of a Zoning Permit for the proposed remodeling and expansion of the residence.
4. If the existing 12.1 ft. x 12.1 ft. shed is removed from the property, it cannot be replaced without additional variances from the Waukesha County Board of Adjustment. Any future garage will also require additional variances from the Waukesha County Board of Adjustment. The petitioner should be aware that there is no guarantee those variances would be granted and that utilizing the variances granted to permit the proposed remodeling and expansion of the residence may preclude the granting of additional variances for any garage or storage shed that may be proposed in the future.
5. The addition to the residence must be constructed substantially in accordance with the plans, dated June 8, 2010, that were submitted with the application and it may be no larger than shown on those plans.
6. A detailed cost estimate that includes the cost of all proposed construction and remodeling must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
7. A Certified Survey Map combining the adjacent substandard parcels into one lot must be prepared by a registered land surveyor and submitted to the Town of Oconomowoc and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division for review and approval. The Certified Survey Map must be recorded in the Waukesha County Register of Deeds office, prior to the issuance of a Zoning Permit for the remodeling and expansion of the residence.

It is recommended that the owner contact the Town of Oconomowoc and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division to request a reduction of the otherwise required minimum width of 66 ft. for the established road right-of-way of E. Lindy Lane and the platted public right-of-way to the west of the property from the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission, prior to submittal of the Certified Survey Map. If that is not done, the Certified Survey Map will be required to show dedications of additional road right-of-way on both the east and west sides of the property, to result in a minimum right-of-way width of 33 ft. from the centerline of E. Lindy Lane and a minimum right-of-way width of 33 ft. from the centerline of the platted public right-of-way to the west of the property. The owner may also wish to contact the Town of Oconomowoc regarding vacation of the 16 ft. wide platted, but unimproved, public right-of-way to the west of the subject property, as it is highly unlikely that a public road would ever be constructed within that public right-of-way and its vacation would not only eliminate the need for the dedication of additional road right-of-way on the Certified Survey Map, but would allow at least the eastern half of that platted public right-of-way to be attached to the subject property.

8. Unless municipal sewer service is available to the property, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit for the remodeling and expansion of the residence.
9. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to road setback because the property is surrounded on three sides by platted roads. Hardships also exist with respect to the open space and floor area ratio requirements, due to the size of the property. Even if the established road rights-of-way of E. Lindy Lane and the 16 ft. wide platted, but unimproved,

public right-of-way on the west side of the property are reduced by the Town of Oconomowoc and the Waukesha County Park and Planning Commission from their otherwise required minimum widths of 66 ft. and the lot area could be calculated without excluding that additional established road right-of-way, the lot area would still only be 8,099 sq. ft. and it would be impossible to meet the minimum open space requirement of 15,000 sq. ft. Further, even based on a lot area of 8,099 sq. ft., a conforming floor area ratio of 15% would permit a total floor area of only 1,214.8 sq. ft., which would be unnecessarily burdensome.

The residence, as it currently exists, is non-conforming because it has less than the required minimum first floor area and total floor area. The proposed addition will eliminate those non-conformities, while still resulting in a residence that is modest in size, in keeping with other homes in the neighborhood, and not contrary to the public interest. In addition, it is anticipated that the property will be served by municipal sewer in the future, which would increase the maximum permitted floor area ratio to 19.5% and reduce the minimum required open space to 10,500 sq. ft. Based on a lot area of 8,099 sq. ft., this would permit a maximum total floor area of 1,579 sq. ft., whereas the proposed remodeled and expanded residence would have a total floor area of only 1,469 sq. ft.

With respect to the 12.1 ft. x 12.1 ft. shed, it is felt that it should be retained if possible, but only if it is relocated so that it is entirely on the subject property. Compliance with the recommended conditions of approval would accomplish that. Further, the approval of the variances and special exception that are required to permit the shed to be relocated so that it is located entirely on the subject property, with the recommended conditions, would not be contrary to the public interest and would not adversely affect the neighboring property owners.

Therefore, the approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value and of variances from the road setback, floor area ratio, and open space requirements, to permit the residence to be remodeled and expanded is in conformance with the purpose and intent of the Ordinance. In addition, the approval of variances from the road setback, floor area ratio, and open space requirements and of a special exception from the accessory building floor area ratio requirement, to permit the shed that is now located mostly within the 16 ft. wide platted, but unimproved, public right-of-way west of the property to be relocated so that it is entirely on the subject property, is also in conformance with the purpose and intent of the Ordinance.

BA10:025 PATRICIA CATALDO (Owner) PAUL SCHULTZ (Architect):

It was determined at the public hearing that since the deck at the level of the exposed basement was damaged by a tree that came down during a storm this summer, that deck is permitted to be rebuilt, per Wisconsin State Statute 59.692 (1s), which provides that if a non-conforming structure (such as the deck at the level of the exposed basement) is damaged or destroyed after October 14, 1997, and the damage or destruction is caused by violent wind, vandalism, fire, flood, ice, snow, mold, or infestation, the damaged or destroyed structure may be restored to the size, location, and use that it had immediately before the damage or destruction occurred and no limit may be imposed on the cost

of the repair or reconstruction. The petitioner indicated at the public hearing that she was willing to modify her proposal to rebuild and expand the deck at the level of the exposed basement and would be willing to rebuild the damaged deck only to its previous size. Therefore, she withdrew her request for shore and floodplain setback variances to allow the damaged deck at the level of the exposed basement to be rebuilt and expanded beyond its previous size and the Board of Adjustment took no action on that request.

The petitioner also indicated at the public hearing that she was willing to modify her proposal to eliminate the proposed 4 ft. wide elevated deck/walkway on the lake side of the proposed addition and construct a 4 ft. wide elevated deck/walkway only on the road side and the northeast side of the residence, which would eliminate the need for shore and floodplain setback variances for the proposed 4 ft. wide elevated deck/walkway. Therefore, she also withdrew her request for shore and floodplain setback variances for the proposed 4 ft. wide elevated deck/walkway and the Board of Adjustment took no action on that request. However, the request for shore and floodplain setback variances for stairs from the 4 ft. wide elevated deck/walkway was not withdrawn.

Ms. Bonniwell

*I move to **approve** shore and floodplain setback variances to permit stairs from an elevated deck/walkway on the northeast side of the residence to extend into the shore and floodplain setback area, provided the elevated deck/walkway itself is located in conformance with the shore and floodplain setback requirements, and to **approve** variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the minimum first floor area, the floor area ratio, and the open space requirements, to permit the residence to be remodeled and expanded, subject to the conditions stated in the Staff Report, but with Conditions No. 1, 2, and 5 modified as follows:*

Revised Condition No. 1 - "The damaged deck at the level of the exposed basement may rebuilt, but only to the exact size that it was prior to being damaged by the falling tree, and only following the submittal of sufficient evidence, to the satisfaction of the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff, that the deck was damaged by an "act of god", pursuant to Wisconsin State Statute 59.692 (1s)."

Revised Condition No. 2 - "The proposed elevated deck/walkway at the level of the first floor must conform with the shore setback, floodplain setback, and offset requirements, but the stairs leading down from the elevated deck/walkway may extend into the shore and floodplain setback area. The minimum required shore setback for the elevated deck/walkway is 73 ft. from the Ordinary High Water Mark. The minimum required floodplain setback for the elevated deck/walkway is 50 ft. The minimum required sideyard offset for the elevated deck/walkway is 5 ft."

Revised Condition No. 5 - "The proposed addition to the residence may extend no more than twelve (12) ft. towards the lake from the

northwest wall of the original portion of the residence and may be no closer to the side lot lines than the original portion of the residence. This will result in a residence with a first floor area of approximately 774 sq. ft. and a total floor area, not including the basement level or the stairs to the second floor, of approximately 1,518 sq. ft. and a floor area ratio of approximately 23.2%."

The reasons for this decision are as stated in the Staff Report, with the following modifications:

The last sentence in the third to the last paragraph shall be eliminated.

The second to the last paragraph shall be revised to read "An elevated deck/walkway at the level of the first floor could be designed to conform with the shore and floodplain setback requirements. Therefore, the granting of shore and floodplain setback variances for an elevated deck/walkway on the lake side of the residence cannot be justified. However, granting shore and floodplain setback variances to allow the stairs from a 4 ft. wide elevated deck/walkway on the side of the residence to extend slightly into the shore and floodplain setback area will not adversely affect the lake or the neighboring properties, is not contrary to the public interest, and will allow access to a second exit from the first floor of the residence, which would bring it into conformance with the uniform dwelling code and is a safety issue."

The last paragraph shall be revised to read "Therefore, the approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value and of variances from the minimum first floor area, floor area ratio, and open space requirements to permit the residence to be remodeled and expanded and the approval of variances from the shore and floodplain setback requirements to permit stairs from the proposed 4 ft. wide elevated deck/walkway to extend slightly into the shore and floodplain setback area, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance."

Additional reasons are as follows: Given the fact that the lot is a non-conforming lot with less than half of the required lot area, some relief should be granted in order to provide a usable home. Even after the proposed expansion, the home will still be modest in size home and there will be sufficient green space on the property. In addition, the proposed addition is in conformance with the shore setback requirement.

The motion was seconded by Mr. Schuett and carried unanimously.

The Planning and Zoning Division staff recommended **denial** of variances from the shore setback and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance for the proposed 4 ft. wide elevated deck/walkway at the level of the first floor of the residence and the proposed rebuilding and enlargement of the damaged deck at the level of the exposed basement, but **approval** of variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit stairs from an elevated deck/walkway on the lake side of the residence to extend into the shore and floodplain setback area, provided the elevated deck/walkway itself is located in conformance with the shore and floodplain setback requirements and subject to the conditions noted below.

The Planning and Zoning Division staff also recommended **approval** of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the minimum first floor area, the floor area ratio, and the open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance, to permit the residence to be remodeled and expanded, subject to the conditions noted below:

1. The damaged deck at the level of the exposed basement may only be rebuilt in conformance with the shore setback, floodplain setback, and offset requirements. Utilizing the shore setback averaging provision of the Ordinance, the deck is required to be at least 73 ft. from the Ordinary High Water Mark of the lake. Utilizing the provision of the Ordinance that permits the otherwise required minimum floodplain setback of 75 ft. to be reduced to 50 ft. when the ground elevation adjacent to the lowest level of the principal building is at least three (3) feet above the 100-year flood elevation, the deck is required to be at least 50 ft. from the 100-year floodplain. Utilizing the offset reduction and sewer reduction provisions of the Ordinance, the deck is required to be at least 5 ft. from the side lot lines.
2. The proposed elevated deck/walkway at the level of the first floor must also conform with the shore setback, floodplain setback, and offset requirements noted above, but the stairs leading down from the elevated deck/walkway may extend into the shore and floodplain setback area.
3. The proposed elevated deck/walkway at the level of the first floor may be no more than 4 ft. in width.
4. The proposed addition to the residence must conform with the minimum shore setback requirement of 75 ft. and the minimum floodplain setback requirement of 50 ft.

Note: The shore setback requirement for the addition is different than the shore setback requirement for the deck because only the adjacent residence to the southwest, not the residence itself, has a non-conforming shore setback and the shore setback averaging provision of the Ordinance allows shore setback averaging only for similar structures.

5. The proposed addition to the residence may extend no more than eight (8) ft. towards the lake from the northwest wall of the original portion of the residence and may be no closer to the side lot lines than the original portion of the residence. This will result in a residence with a first floor area of approximately 684 sq. ft. and a total floor area, not including the

- basement level or the stairs to the second floor, of approximately 1,368 sq. ft. and a floor area ratio of approximately 20.9%.
6. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
 7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the proposed addition, the proposed elevated deck/walkway, and any deck that is proposed at the level of the exposed basement, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
 8. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure that the proposed construction does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
 9. The existing non-conforming shed must be removed from the property, prior to the issuance of a Zoning Permit to remodel and expand the residence, and cannot be replaced without additional variances from the Waukesha County Board of Adjustment. The petitioner should be aware that there is no guarantee those variances would be granted and that utilizing the variances granted to permit the residence to be remodeled and expanded may preclude the granting of additional variances for any storage shed that may be proposed in the future.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A hardship exists with respect to the minimum open space requirement because it is impossible to conform with the minimum open space requirement of 10,500 sq. ft. when the lot area is only 6,541 sq. ft. Further, denial of a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision would limit the cost of remodeling and expansion of the residence to \$62,500, which would also be unnecessarily burdensome.

Granting a variance to permit the first floor of the residence to have a floor area that is less than the required minimum first floor area of 850 sq. ft. will result in more open space on this extremely non-conforming lot and allow the construction of a full second story, while still

resulting in a reasonable floor area ratio and a residence that is in keeping with other homes in the area. Reducing the depth of the proposed addition so it extends only eight (8) ft. towards the lake from the northwest wall of the original portion of the residence, as recommended, instead of twelve (12) ft., as proposed, will allow the new addition to be built with the same depth as the previously constructed addition it will be replacing and will facilitate the construction of an elevated deck/walkway at the level of the first floor and the construction of a deck at the basement level that are in conformance with the shore and floodplain setback requirements.

An elevated deck/walkway at the level of the first floor and a smaller deck at the level of the exposed basement could be designed to conform with the shore and floodplain setback requirements. Therefore, the granting of shore and floodplain setback variances for the proposed decks themselves cannot be justified. However, granting shore and floodplain setback variances to allow the stairs from the proposed 4 ft. wide elevated deck/walkway to extend slightly into the shore and floodplain setback area will not adversely affect the lake or the neighboring properties, is not contrary to the public interest, and will allow access to a second exit from the first floor of the residence, which would bring it into conformance with the uniform dwelling code.

Therefore, the approval of shore and floodplain setback variances for the proposed decks would not be in conformance with the purpose and intent of the Ordinance. However, the approval of a variance to remodel a non-conforming structure in excess of 50% of its fair market value and of variances from the minimum first floor area, floor area ratio, and open space requirements to permit the residence to be remodeled and expanded and the approval of variances from the shore and floodplain setback requirements to permit stairs from the proposed 4 ft. wide elevated deck/walkway to extend slightly into the shore and floodplain setback area, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

MISCELLANEOUS: Village of Summit Shoreland Administration Update

Ms. Finet reported to the Board that since the Town of Summit has incorporated into the Village of Summit, it is now the responsibility of the Village of Summit to enforce the requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and all variances and appeals in the Village of Summit will now be heard by the Village of Summit Board of Appeals. However, it was noted that in the case of recent variances in the Town of Summit that were granted by the Waukesha County Board of Adjustment prior to its incorporation, especially those variances involving floodplain, the Waukesha County Department of Parks and Land Use - Planning and Zoning Division will be working with the petitioners and the Village of Summit to ensure that all conditions of approval are complied with.


OTHER ITEMS REQUIRING BOARD ACTION: None

ADJOURNMENT:

Mr. Day *I move to adjourn this meeting at 8:50 p.m.*

The motion was seconded by Mr. Schuett and carried unanimously.

Respectfully submitted,



Nancy M. Bonniwell
Secretary, Board of Adjustment